

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0005P

Use Tax

Calendar Years 1995, 1996, 1997, and 1998

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer has several business locations in Indiana and its principal line of business is to serve the investment and capital needs of individual and institutional clients. Taxpayer was previously audited on August 23, 1994. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items, some of which are similar to those assessed in a prior audit.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that due to the magnitude of its overall operations, and the vast number of invoices received from its vendors, not every invoice can be examined to determine if the appropriate Indiana sales tax should have been applied. Taxpayer further states it did not intentionally disregard any Indiana sales tax statutes.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence

shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The taxpayer was previously audited with primarily the same issues. Taxpayer failed to self assess and remit use tax on more than ninety percent of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.